

Based upon the record compiled to date, and for the reasons explained below, the Appeals Board finds that the ALJ's order should be affirmed.

Findings of Fact

1. Claimant was employed by respondent as a roofer for approximately five years. His work activities required him to perform heavy manual labor including climbing ladders, bending, stooping, squatting, kneeling and walking on uneven surfaces. He was regularly required to lift and carry objects weighing between 80 and 130 pounds.
2. Claimant was involved in a non-work related automobile accident on April 27, 1998, injuring his neck and back with pain radiating to his left leg. Claimant was treated by Dr. Michael P. Estivo and on June 12, 1998 he was released to return to work without restrictions.
3. On November 16, 1998 claimant injured his back and neck lifting rolls of roofing materials. About this same time claimant was also injured when he bumped his head on a garage roof. Both of these accidents occurred at work.
4. Within a week of November 16, 1998 claimant provided notice of his accidental injuries to respondent. He was provided authorized medical treatment with Dr. Frank R. Smith. Dr. Smith's records show that he treated claimant for respondent for a work related injury and the bills were sent to respondent under workers compensation.
5. Claimant treated with Dr. Smith on three occasions - November 20, November 24 and December 3, 1998. Claimant was released to return to work without restrictions. Claimant continued to perform his full work duties for respondent until July 23, 1999.
6. During June and July of 1999 claimant asked his supervisor several times if he could be put on jobs with flatter roofs because working on the steep pitched roofs was irritating his back. These requests were denied and claimant continued working on steep pitched roofs.
7. On July 20, 1999 claimant returned to Dr. Estivo with complaints of low back pain. Claimant asked for and received work restrictions. Claimant gave a copy of those restrictions to his supervisor.
8. The last two roofs claimant worked on were flat roofs. This change helped claimant's back problems a little bit but his back was still hurting him on July 23, 1999 when he was terminated for poor job performance.

Conclusions of Law

Claimant met with personal injury by a series of accidents arising out of and in the course of his employment with respondent. The date or dates of accident is not a jurisdictional issue, but it will be addressed to the extent necessary to decide if notice was timely.

Claimant asked his supervisor in June and July of 1999 if he could be put on jobs with flatter roofs because working on steep pitched roofs was irritating his back. These conversations placed respondent on notice that claimant was attributing his symptoms to his work. This was timely notice of the series of accidents that occurred each and every working day through July 23, 1999. The preliminary hearing benefits claimant seeks, specifically temporary total disability compensation and medical treatment, are directly attributable to this series of accidents.

Which insurance carrier should pay for preliminary hearing benefits is not a jurisdictional issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated November 3, 1999, entered by Administrative Law Judge Nelsonna Potts Barnes, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: Charles W. Hess, Wichita, KS
Mark A. Buck, Topeka, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director